

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY APRIL 17, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1603

**Introduced by Assembly Members Feuer and Eng
(Coauthors: Assembly Members Dickinson and Skinner)**

February 6, 2012

An act to add Article 1.7 (commencing with Section 2946) to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1603, as amended, Feuer. Mortgages and deeds of trust: mortgage servicers: force-placed insurance.

Existing law generally regulates mortgages and deeds of trust, including, among other things, recording mortgages and deeds of trust, disclosures in connection with mortgages and deeds of trust, and foreclosure procedures for mortgages and deeds of trust.

This bill would prohibit a mortgage servicer, as defined, from obtaining a replacement policy of hazard, flood, or homeowner's insurance, collectively defined as "force-placed insurance," with respect to a residential property securing a mortgage loan, unless there is a reasonable basis to believe that the borrower has failed to comply with contract requirements to maintain hazard, flood, or homeowner's insurance. The bill would require, if a borrower's existing hazard, flood, or homeowner's insurance policy is paid through an escrow account, that the mortgage servicer advance payments to continue the borrower's existing policy, as specified.

The bill would require a mortgage servicer to provide written notices, as specified, to a borrower prior to obtaining force-placed insurance. The bill would specify the circumstances, manner, and limitations under which a mortgage servicer may obtain force-placed insurance, and when a borrower is entitled to a refund from the mortgage servicer in connection with that insurance.

The bill would authorize a borrower to bring a civil action in connection with the mortgage servicer's violation of the provisions of the bill. The bill would authorize the Attorney General, district attorney, or city attorney to bring an action for injunctive relief, and for restitution, disgorgement, or damages, as appropriate, for the affected borrowers. The bill would also authorize the Attorney General, district attorney, or city attorney to include a claim for costs, including reasonable attorney's fees and expenses. The bill would further authorize the Attorney General, district attorney, or city attorney to *ask the court to* levy a civil penalty not exceeding \$10,000 against any mortgage servicer who violates the provisions of the bill, ~~and would establish notice and hearing procedures for persons subject to the civil penalty.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 1.7 (commencing with Section 2946) is
2 added to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil
3 Code, to read:

4
5 Article 1.7. Force-Placed Insurance

6
7 2946. As used in this article, the following definitions shall
8 apply:

9 (a) "Force-placed insurance" means a policy of hazard, flood,
10 or homeowner's insurance that is obtained by a mortgage servicer
11 with respect to real property securing a mortgage loan serviced by
12 the mortgage servicer.

13 (b) "Mortgage servicer" means a person that is an approved
14 servicer for the Federal Housing Administration, Veterans
15 Administration, Farmers Home Administration, Government
16 National Mortgage Association, Federal National Mortgage

1 Association, or Federal Home Loan Mortgage Corporation, and
2 directly services or offers to service mortgage loans.

3 (c) “Mortgage loan” means a federally related mortgage loan
4 as defined in Section 3500.2 of Title 24 of the Code of Federal
5 Regulations, or a loan made to finance construction of a one-to-four
6 family dwelling.

7 2946.1. (a) A mortgage servicer shall not obtain force-placed
8 insurance unless there is a reasonable basis to believe the borrower
9 has failed to comply with the mortgage loan requirement to
10 maintain hazard, flood, or homeowner’s insurance.

11 (b) If the borrower’s existing hazard, flood, or homeowner’s
12 insurance policy is paid through an escrow account, then the
13 mortgage servicer shall advance payments to continue the
14 borrower’s existing policy, unless the borrower or insurance
15 company cancels the existing policy.

16 2946.2. A mortgage servicer shall not be deemed to have a
17 reasonable basis for obtaining force-placed insurance unless the
18 requirements of this article have been met.

19 2946.3. (a) A mortgage servicer shall not impose any charge
20 on a borrower for force-placed insurance unless the mortgage
21 servicer has met all of the following conditions:

22 (1) The mortgage servicer has sent, by first-class mail, a copy
23 of the written notice as described in subdivision (b) to the borrower.

24 (2) If the mortgage servicer has not received from the borrower
25 written confirmation of hazard, flood, or homeowner’s insurance
26 coverage for the property securing the mortgage loan, the mortgage
27 servicer has sent, by first-class mail, a second copy of the written
28 notice described in subdivision (b), at least 30 days after the
29 mailing of the first notice.

30 (3) The mortgage servicer has not received from the borrower
31 written confirmation of hazard, flood, or homeowner’s insurance
32 coverage for the property securing the mortgage loan within 15
33 days from the date that the second notice was sent by the mortgage
34 servicer.

35 (b) The written notice required by subdivision (a) shall contain
36 all of the following:

37 (1) A reminder of the borrower’s obligation to maintain hazard,
38 flood, or homeowner’s insurance on the property securing the
39 mortgage loan.

1 (2) A statement that the mortgage servicer does not have
2 evidence of insurance coverage for the property.

3 (3) A clear and conspicuous statement of the procedures by
4 which the borrower may demonstrate that the borrower has existing
5 insurance coverage for the property.

6 (4) A statement that the mortgage servicer may obtain insurance
7 coverage for the property at the borrower's expense if the borrower
8 does not provide a demonstration of the borrower's existing
9 coverage in a timely manner.

10 (5) A statement that the cost of the insurance coverage may be
11 significantly higher than the cost of the borrower's previous
12 coverage.

13 (6) For first lien loans on a mortgage servicer's primary
14 servicing system, a statement that, if the borrower desires to
15 maintain his or her existing policies, the mortgage servicer will
16 offer an escrow account and advance the premium due on the
17 existing policy or policies if the borrower does all of the following:

18 (A) Accepts the offer of the escrow account.

19 (B) Provides a copy of the most recent invoice from the existing
20 carrier.

21 (C) Agrees in writing to reimburse the escrow advances through
22 regular escrow payments.

23 (D) Agrees to an escrow account to both repay the advanced
24 premium and to pay for the future premiums necessary to maintain
25 any required insurance policy.

26 (E) Agrees that the mortgage servicer shall manage the escrow
27 account in accordance with the loan documents and with state and
28 federal law.

29 (7) A statement, in the case of single interest coverage, that the
30 coverage may only protect the mortgageholder's interest and not
31 the borrower's interest.

32 2946.4. A mortgage servicer shall accept any reasonable form
33 of written communication from a borrower or the borrower's
34 insurance agent of existing insurance coverage, which shall include
35 the existing insurance policy number along with the identity of,
36 and contact information for, the insurance company or agent.

37 2946.5. A mortgage servicer shall not obtain hazard, flood, or
38 homeowner's insurance for a mortgaged property, or require a
39 borrower to obtain or maintain that insurance, in excess of the
40 greater of the replacement value, the last known amount of the

1 coverage, or the outstanding loan balance, unless requested by the
2 borrower in writing.

3 2946.6. Within 15 days of the receipt by a mortgage servicer
4 of evidence of a borrower's insurance coverage, the mortgage
5 servicer shall terminate any force-placed insurance and refund to
6 the borrower all force-placed insurance premiums paid by the
7 borrower during any period during which the borrower's insurance
8 coverage and the force-placed insurance coverage were both in
9 effect, and any related fees charged to the borrower's account with
10 respect to the force-placed insurance during that period.

11 2946.7. A mortgage servicer shall not obtain force-placed
12 insurance from an affiliated entity or any entity in which the
13 mortgage servicer has an ownership interest.

14 2946.8. (a) A mortgage servicer shall not split fees, or give or
15 accept any referral fees or anything else of value, in connection
16 with obtaining force-placed insurance.

17 (b) A mortgage servicer shall pay to the borrower the amount
18 of any funds that the mortgage servicer receives as a result of
19 obtaining force-placed insurance in violation of this section.

20 2946.9. Any force-placed insurance policy shall be placed with
21 an insurer admitted to do business in this state.

22 2946.10. No provision of this article shall be construed as
23 prohibiting a mortgage servicer from providing simultaneous or
24 concurrent notice of a lack of flood insurance pursuant to Section
25 102(e) of the federal Flood Disaster Protection Act of 1973.

26 2946.11. (a) A borrower may bring a civil action against a
27 mortgage servicer that violates this article with respect to that
28 borrower.

29 (b) If the borrower prevails in the civil action, the borrower
30 shall be awarded attorney's fees and the greater of actual damages
31 or five thousand dollars (\$5,000).

32 2946.12. (a) In addition to the remedy provided in Section
33 2046.11, the Attorney General, a district attorney, or a city attorney
34 may bring an action for injunctive relief, and for restitution or
35 disgorgement, as appropriate, and may include a claim for
36 reasonable attorney's fees and costs of investigation.

37 (b) In addition to the remedies provided in subdivision (a) and
38 in Section 2946.11, the Attorney General, a district attorney, or a
39 city attorney may *ask the court* to levy a civil penalty not exceeding

1 ten thousand dollars (\$10,000) against any mortgage servicer who
2 violates this article.

3 ~~(e) Before a civil penalty is levied, the person charged with the~~
4 ~~violation shall be given a written notice of the nature of the~~
5 ~~violation and the amount of the proposed penalty, and shall have~~
6 ~~the right to request a hearing within 20 days after receiving notice~~
7 ~~of the proposed penalty. A notice of the proposed penalty that is~~
8 ~~sent by certified mail to the last known address of the person~~
9 ~~charged shall be considered to have been received even if delivery~~
10 ~~is refused or the notice is not accepted at that address. If a hearing~~
11 ~~is requested, notice of the time and place of the hearing shall be~~
12 ~~given at least 10 days before the date set for the hearing. At the~~
13 ~~hearing, the person shall be given an opportunity to review the~~
14 ~~Attorney General's, district attorney's, or city attorney's evidence~~
15 ~~and to present evidence on his or her own behalf. If a hearing is~~
16 ~~not timely requested, the Attorney General, district attorney, or~~
17 ~~city attorney may impose the penalty proposed without a hearing.~~